

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LULA MAE SMITH, #138349,

Petitioner,

v.

CASE NO. 2:17-CV-13645
HONORABLE SEAN F. COX

SHAWN BREWER,

Respondent.

**OPINION AND ORDER DENYING THE APPLICATION TO PROCEED
IN FORMA PAUPERIS, DISMISSING THE PETITION FOR A WRIT
OF HABEAS CORPUS AND THE MOTION TO STAY THE PETITION,
AND DENYING A CERTIFICATE OF APPEALABILITY**

Michigan prisoner Lula Mae Smith (Petitioner") has submitted a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, a motion to stay the petition, and an application to proceed in forma pauperis. Petitioner's certificate of prisoner institutional/trust fund account activity states that she had a current spendable account balance of \$1,399.10 in her prison account as of October 16, 2017 when an administrative officer of the Michigan Department of Corrections certified her financial statement. The Court concludes from the financial data that Petitioner has not established indigence and that she can pay the \$5.00 filing fee for this action. Accordingly, the Court **DENIES** Petitioner's application to proceed in forma pauperis and **DISMISSES WITHOUT PREJUDICE** her petition for a writ of habeas corpus and her motion to stay the petition. The Court is required to dismiss the case because the allegation of poverty is untrue. *See* 28 U.S.C. § 1915(e)(2)(A). Petitioner may submit a new habeas petition with payment of the filing fee in a new case. This case will not be reopened.

Before Petitioner may appeal the Court's decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court denies relief on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court's assessment of the constitutional claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a court denies relief on procedural grounds, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the court was correct in its procedural ruling. *Id.* Jurists of reason would not find the Court's procedural ruling debatable. Accordingly, the Court **DENIES** a certificate of appealability. This case is closed.

IT IS SO ORDERED.

Dated: January 12, 2018

s/Sean F. Cox

Sean F. Cox
U. S. District Judge

I hereby certify that on January 12, 2018, the foregoing document was served on counsel of record via electronic means and upon Lula Mae Smith via First Class mail at the address below:

Lula Mae Smith 138349
HURON VALLEY COMPLEX - WOMENS
3201 BEMIS ROAD
YPSILANTI, MI 48197

s/J. McCoy

Case Manager